

may, at his discretion, consider the issues along with the other issues pending before him on the same request for hearing.

[32 FR 18028, Dec. 16, 1967. Redesignated at 42 FR 52826, Sept. 30, 1977, and amended at 59 FR 12183, Mar. 16, 1994]

**§ 405.831 Waiver of right to appear and present evidence.**

If all parties waive their right to appear before the hearing officer and present evidence and contentions personally or by representative, it shall not be necessary for the hearing officer to give notice of or conduct a formal hearing as provided in §§ 405.825 through 405.830. A waiver of the right to appear is to be in writing and filed with the hearing officer or the carrier. Such waiver may be withdrawn by a party at any time prior to the mailing of notice of the decision in the case. Even though all of the parties have filed a waiver of the right to appear and present evidence and contentions at a hearing before the hearing officer, the hearing officer may, nevertheless, give notice of a time and place and conduct a hearing as provided in §§ 405.825 through 405.830, if he believes that the personal appearance and testimony of the party or parties would assist him to ascertain the facts at issue in the case. For purposes of this section, failure of the parties to appear shall not be cause for a finding of abandonment and the hearing officer shall make his decision on the basis of all evidence adduced.

**§ 405.832 Dismissal of request for carrier hearing.**

(a) *By application of party.* With the approval of the hearing officer, a request for a hearing may be withdrawn or dismissed at any time prior to the mailing of notice of the decision upon the application of the party or parties filing the request for such hearing. A party may request a dismissal by filing a written notice of such request with the carrier, the hearing officer or orally stating such request at the hearing. The dismissal of a request for hearing shall be final and binding unless vacated (see paragraph (d) of this section).

(b) *Dismissal by abandonment of party.* A hearing officer may dismiss a request for hearing upon abandonment by the party or parties who filed the request. A party shall be deemed to have abandoned a request for hearing, other than where personal appearance is waived in accordance with § 405.831, if neither the party nor his representative appears at the time and place fixed for the hearing and within 10 days after the mailing of a notice to him by the hearing officer to show cause, such party does not show good and sufficient cause for such failure to appear and failure to notify the hearing officer prior to the time fixed for hearing that he cannot appear.

(c) *Dismissal for cause.* The hearing officer may, on his own motion, dismiss a hearing request, either entirely or as to any stated issue, under either of the following circumstances:

(1) Where the party requesting a hearing is not a proper party under § 405.822 or does not otherwise have a right to a hearing under section 1842(b)(3)(c) of the Act; or

(2) Where the party who filed the hearing request dies and there is no information before the hearing officer showing that an individual who is not a party may be prejudiced by the carrier's determination.

(d) *Dismissal without prejudice.* The hearing officer may on his own motion dismiss without prejudice a hearing request where the amount in controversy is less than \$100.

(e) *Vacation of dismissal.* A hearing officer may, on request of a party and for good and sufficient cause shown, vacate any dismissal of a request for hearing at any time within 6 months from the date of mailing notice of the dismissal to the party requesting the hearing at his last known address.

[32 FR 18028, Dec. 16, 1967, as amended at 39 FR 12098, Apr. 3, 1974. Redesignated at 42 FR 52826, Sept. 30, 1977, and amended at 59 FR 12183, Mar. 16, 1994]

**§ 405.833 Record of carrier hearing.**

A complete record of the proceedings at the hearing shall be made. The testimony shall be transcribed and copies of other documentary evidence shall be reproduced in any case when directed by the hearing officer, the carrier or